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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,594	03/30/2004	Dylan S. Van Atta	005127.00356	5894
22910 7590 05/11/2007 BANNER & WITCOFF, LTD. 28 STATE STREET 28th FLOOR BOSTON, MA 02109-9601			EXAMINER MORAN, KATHERINE M	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/814,594

Applicant(s)

VAN ATTA ET AL.

Examiner

Katherine Moran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 5-17 and 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/27/07 has been entered.

Response to Amendment

2. Applicant's amendment of 2/27/07 has been received and reviewed. Applicant amended claim 1, with claims 1-26 pending and claims 5-17 and 22-26 withdrawn as non-elected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by McGlasson et al. (U.S. 6,256,799). McGlasson discloses the invention as claimed. McGlasson teaches a cap which could be used for swimming comprising a first portion

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10 formed from rigid shell material and configured to cover at least a portion of a crown of a user's head, with the first portion having a first durometer, and a second portion 28 secured to and overlaying the first portion, and having a smaller durometer than the first durometer. The second portion is formed from flexible and stretchy material which inherently provides tension to keep the cap tight on a user's head. The second portion entirely covers the first portion and extends beyond a peripheral edge of the first portion.

5. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Gill (U.S. 6,237,162). Gill discloses the invention as claimed. Gill teaches a cap which could be used for swimming comprising a first portion 24 formed from rigid shell material and configured to cover at least a portion of a crown of a user's head, with the first portion having a first durometer, and a second portion 10 secured to and overlaying the first portion, and having a smaller durometer than the first durometer. The second portion is formed from flexible and stretchy material which inherently provides tension to keep the cap tight on a user's head. The second portion entirely covers the first portion and extends beyond a peripheral edge of the first portion. The second portion has as stretchable lower edge 22 to curl under the helmet's lower edge.

6. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Straus (U.S. 4,937,888). Straus discloses the invention as claimed. Straus teaches a cap which could be used for swimming comprising a first portion 12 formed from rigid shell material and configured to cover at least a portion of a crown of a user's head, with the first portion having a first durometer, and a second portion 11 secured to and overlaying the first portion, and having a smaller durometer than the first durometer. The second

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portion is formed from flexible and stretchy (elastomeric) material which inherently provides tension to keep the cap tight on a user's head. The second portion entirely covers the first portion and extends beyond a peripheral edge of the first portion. The outer peripheral portion of the second portion 11 has a thickness greater than a thickness of its inner portion as shown in Figure 5 with the front (outer) of the second portion 11 has a greater thickness than the rear portion (inner).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Straus in view of Ewing et al. (Ewing, U.S. 2002/0184699). Straus discloses the invention substantially as claimed. However, Straus doesn't teach a first portion formed of PETg. Ewing teaches a plastic portion formed from PETg and teaches that PETg has excellent impact strength and durability. Therefore, it would have been obvious to form Straus' helmet from PETg as taught by Ewing because this would lend a superior impact-resistant and durable property to Straus' cap.

9. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straus in view of Guadagnino, Jr. et al. (Guadagnino, U.S. 5,790,988). Straus discloses the invention substantially as claimed. However, Straus doesn't teach the

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second portion formed of silicone. Guadagnino teaches a head covering 10 with a silicone coating 13. Silicone is known as a synthetic plastic rubber with superior resilience and water resistant properties and can be formed as a rigid or soft polymer. Applicant's specification teaches that any soft, flexible, stretchy material is deemed suitable for the second portion and any relatively stiff, pliable material is suitable for the first portion, and further, does not provide criticality for employing one particular material over another, as long as the material has the desired properties. Therefore, it would have been obvious to form Straus' first or second portion from silicone in order to provide improved water-resistant and resiliency properties.

10. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Straus in view of Gregg (U.S. 3,979,777). Straus discloses the invention substantially as claimed. However, Straus doesn't teach the second portion is formed from latex. Gregg teaches a helmet with a second portion formed from latex rubber to more closely conform to the contours of a wearer's head. Applicant's specification teaches that any soft, flexible, stretchy material is deemed suitable for the second portion and does not provide criticality for employing one particular material over another as long as the material has the desired properties. Therefore, it would have been obvious to form Straus' second portion from latex in order to provide improved water-resistant properties to the second portion.

Response to Arguments

11. Applicant's arguments, filed 2/27/07 with respect to the rejection(s) of claims 1-4 and 18-21 have been fully considered. Applicant's amendment to claim 1 overcomes the prior art of record and revised prior art rejections are presented above.

Conclusion

12. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

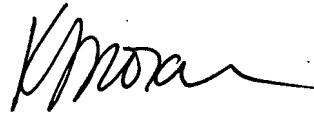
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kmm

May 8, 2007

A handwritten signature in black ink, appearing to read 'K Moran', with a stylized, flowing script.

Katherine Moran

Primary Examiner, AU 3765